



**THE ATTORNEY GENERAL
OF TEXAS**

JOHN L. HULL
ATTORNEY GENERAL

AUSTIN, TEXAS 78711

January 20, 1977

The Honorable Lorene Rogers
President
The University of Texas at Austin
Austin, Texas 78712
Attention: James T. Fitzpatrick

Open Records Decision No. 151
Re: Whether list of
former students who are
credited with funds in
their general property
deposit is public.

Dear Dr. Rogers:

Pursuant to section 7 of the Open Records Act, article 6252-17a, V.T.C.S., you request our decision as to whether a list of the names and addresses of all former students who are credited with funds remaining in their general property deposit is excepted from required public disclosure.

The only unique fact disclosed by the information requested is that the former students are creditors of the University in relatively small amounts. This information is simply not the type of intimate private fact the disclosure of which would be highly offensive to a reasonable person of ordinary sensibilities so as to bring it within the concept of privacy protected by the common law. See Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668, 682 (Tex. Sup. 1976). On the other hand, the public has a substantial concern with the financial affairs of governmental bodies. The public policy in this regard is clearly expressed in section 6(3) of the Open Records Act, which specifically makes public:

[I]nformation in any account, voucher,
or contract dealing with the receipt or
expenditure of public or other funds by
governmental bodies, not otherwise made
confidential by law

It is our decision that the information requested is not excepted from required public disclosure as a student record by the section 3(a)(14) exception of the Act.

The next issue is whether the release of the requested information is restricted by the Federal Family Educational Rights and Privacy Act of 1974, 20 U.S.C.A. § 1232g (the "Buckley Amendment"). Section 14(e) of the Texas Open Records Act was added in 1975 by the 64th Legislature, and provides:

Nothing in this Act shall be construed to require the release of information contained in education records of any educational agency or institution except in conformity with the provisions of the Family Educational Rights and Privacy Act of 1974. . . .

The Federal Act prohibits the release of federal funds to any institution which releases "education records" to anyone other than certain authorized individuals. The language of the Federal Act is very broad and inclusive in defining "education records" as all records, files, documents, and other materials which contain information directly related to a student, with only a few exceptions. It does, however, establish a category of records known as "directory information," which may be publicly released after certain general notice is given. 20 U.S.C.A. § 1232g(a)(5)(A). Directory information consists of information in which individuals have only a minimal privacy interest. It includes information which might normally be found in a student directory, but the term "directory information" is misleadingly narrow, since other types of records may be included even though they would not normally be found in a directory. This broad reading of the term "directory information" is supported by the legislative history [120 Cong. Rec. S-8069 (daily ed. May 14, 1974); 120 Cong. Rec. S-21487 to 21488 (daily ed. Dec. 13, 1974)]; by the regulations [45 C.F.R. § 99.3] and by the comments of the Secretary of Health, Education and Welfare accompanying the regulations [41 Fed. Reg. 24662 (June 17, 1976)].

We requested the advice of the Secretary of the United States Department of Health, Education and Welfare in this matter, and his office has advised us that the information would be considered an "education record" and subject to the provisions of the Act and regulations. However, he also advised that that office could see no reason to suggest that the information could not be considered a category of directory information. In requesting our decision on the question,

the attorney for the University of Texas System contended that the information was a form of directory information. Once established as directory information pursuant to the procedure set out in the Act and regulations, the information may be disclosed. 20 U.S.C.A. § 1232g (a)(5); 45 C.F.R. § 99.37(c) (1976).

The release of so-called directory information is discretionary with the institution under the Federal Act. However, we have held that an institution subject to the Texas Open Records Act is obligated to comply with the Federal Act requirements so that it can release that directory information in which no privacy interest has been asserted. Open Records Decision No. 96 (1975).

In this instance, the information requested concerns only students no longer in attendance at the University, and the federal regulations provide:

An educational agency or institution may disclose directory information from the education records of an individual who is no longer in attendance at the agency or institution without following the procedures under paragraph (c) of this section. 45 C.F.R. § 99.37(b) (1976).

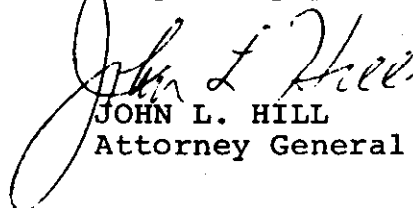
Thus, the information is public under the Texas Open Records Act, and under the Federal Act it could be considered as so-called directory information and should be treated as such. The federal regulations, in our opinion, do not require notice to former students prior to the release of directory information about them, thus, none is required here. However, we believe the University should include this type of information as that which it considers directory information in its future public notices.

It is also the University's position that the information is not readily available in the form requested, and that it would require the expenditure of considerable time and expense to prepare a computer program to retrieve it. The requestor has stated his willingness to pay the reasonable costs required to obtain the information. The Texas Supreme Court has held that the Open Records Act "does not allow either

the custodian of records or a court to consider the cost or method of supplying requested information in determining whether such information should be disclosed." The Court pointed out that all costs incurred in providing access must be borne by the requesting party. Industrial Foundation of the South v. Texas Industrial Accident Board, supra at 687. See Hendricks v. Board of Trustees of Spring Branch Independent School District, 525 S.W.2d 930, 932 (Tex. Civ. App. -- Houston [1st Dist.] 1975, writ ref'd n.r.e.); Open Records Decision Nos. 74, 65 (1975), 23 (1974).

It is our decision that the information requested is not excepted from required public disclosure by section 3(a)(14), that its release as directory information would be in conformity with the Federal Act, and that the magnitude or expense of supplying information is not a basis for refusing to comply with the request.

Very truly yours,



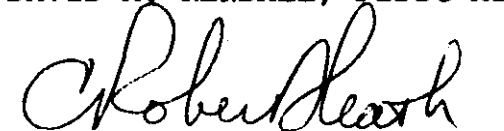
JOHN L. HILL

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APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee

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